

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Bonita B. Davis,

Petitioner-Appellant,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

Docket No. 09-77-1354

Parcel No. 100/09058-000-000

On November 12, 2010, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Bonita B. Davis was self-represented and participated by phone. She submitted evidence in support of her position. The Polk County Board of Review designated Assistant County Attorney Ralph Marasco, Jr. as its legal representative. It submitted evidence in support its claims. The Appeal Board having reviewed the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

Bonita Davis is the owner of a residentially classified, single-family residence located at 2425 Kenway Drive, Des Moines, Iowa. The property is a one-story residence built in 1925. It has 748 square feet of total living area with a full, unfinished basement. These improvements are listed in normal condition. Other features include a 132 square foot open porch and an 18 foot x 20 foot detached garage built in 1950 and listed in below normal condition. The site is 7350 square feet.

The January 1, 2009, total assessment of Davis's property was \$78,000 allocated as follows: \$27,400 in land value and \$50,600 in improvement value.

Davis protested to the Board of Review asserting the following grounds: 1) the assessment is not equitable as compared with assessment of other like property in the taxing district based on Iowa Code section 441.37(1)(a); 2) the property is assessed for more than authorized by law under section 441.37(1)(b); and 3) that there has been a downward change in the value since the last assessment under sections 441.37(1) and 441.35(3). The Board of Review denied the protest.

Davis then appealed to this Board, reasserting the claims of equity and downward change. She wrote on her appeal “the ‘market’ supports a downward change in value.” Davis also claimed there is an error in the assessment under section 441.37(1)(d). Error was not claimed before the Polk County Board of Review; therefore we can not consider a claim of error. Further, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass’n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider the claim of over-assessment along with the claim of inequity.

Davis provided undated newspaper clippings from the Des Moines Register, which reports the decline of sales prices in 2009. The articles are general in nature and reference the entire Des Moines area market as well as national markets. But there is no indication the general information presented in the articles should apply to the specific neighborhood or subject property. For this reason, we give the articles limited consideration.

Davis included a one-page document with her appeal to this Board, but it was not sent to the Polk County Board of Review. The untitled document was introduced as Exhibit 2 and the Board of Review objected to it based on timeliness and relevance. Exhibit 2 was admitted subject to the objection.

Exhibit 2 has twenty-seven property addresses, the properties’ total living area, parcel numbers, and the 2005 and 2007 assessments. When asked to explain the relevancy of the exhibit or how it

pertained to her property, Davis indicated she could not remember. She indicated she did not have a copy of the exhibit herself and suggested it was created by her daughter. Accordingly, we give Exhibit 2 no consideration.

Davis did not offer any properties for an equity analysis. Nor did she offer any properties for a market value analysis.

Davis's primary concern was that her property is not in "normal" condition, due to significant deferred maintenance. She indicated there had been a hole in the roof that required repair, damaged ceilings and walls, peeling paint, and outdated electrical wiring as examples. Davis indicated the Board of Review had requested an "appraiser" inspect the property prior to this hearing, however, she declined. It is not clear if the appraiser was to be a representative of the assessor's office or an independent fee appraiser. Regardless, had Davis allowed the appraiser to inspect the interior of her property it may have benefited her, as it would have provided third party observation to the condition of the home.

The Board of Review did not offer any evidence in addition to the certified record. The certified record included five protest comparables that were adjusted reconciled to indicate a total value of \$97,660. The record also includes a cost analysis indicating a total value of \$78,000 for the property, which reflects a 25% discount for termite damage. Lastly, the record includes a list of all the properties in the immediate neighborhood (a total of seventy-nine), that notes with the exception of one property, the subject property has the lowest assessed value.

We find that insufficient evidence has been provided to demonstrate the subject is inequitably assessed or assessed for more than authorized by law.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The Iowa Supreme Court has interpreted

“representative number of comparable properties” to be more than one property. Iowa Code § 441.37(1)(a); *Maxwell v. Shiver*, 257 Iowa 575, 581, 133 N.W.2d 709, 712 (1965). This “statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board.” *Montgomery Ward Dev. Corp. by Ad Valorem Tax, Inc. v. Cedar Rapids Bd. of Review*, 448 N.W.2d 436, 441 (Iowa 1992), *overruled on other grounds by Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614 (Iowa 1996). Davis did not provide any properties for comparison failing to meet the requirements for an equity claim.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Davis did not provide any properties for market value comparison, such as sales of comparable properties and failed to provide sufficient support for what she believes is the correct value of the property.

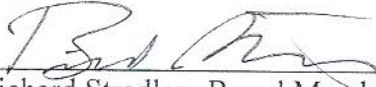
The evidence does not support the claims brought before this Board. Therefore, we affirm the January 1, 2009, assessment of the property located at 2425 Kenway Drive, Des Moines, Iowa, as determined by the Polk County Board of Review.

THE APPEAL BOARD ORDERS the assessment of 2425 Kenway Drive, Des Moines, Iowa, as of January 1, 2009, set by the Polk County Board of Review, is affirmed.


Dated this 23 day of November 2010



Karen Oberman, Board Chair



Richard Stradley, Board Member



Jacqueline Rypma, Board Member

Cc:

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APPELLANT

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-22</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>Ralph Marasco</i></u>